

## **REMARKS**

By the *Office Action* of 27 October 2010, Claims 1-8, 14-16, and 21-23 are pending in the *Application*, all of which are rejected. Applicant thanks the Examiner with appreciation for the careful consideration and examination given to the Application.

Applicant submits this *Response* solely to facilitate prosecution. As such, Applicant reserves the right to pursue claims of broader or similar scope as originally filed in a continuation application or other application after allowance of the present *Application*. Applicant does not concede that the current or past rejections are correct and reserves the right to challenge such rejections later in prosecution or on appeal. Accordingly, any amendment, argument, or claim cancellation is not to be construed as abandonment or disclaimer of subject matter. As certain of the current amendments may include broadening amendments, Applicant respectfully requests the Examiner to revisit any previously reviewed references cited in this *Application* to further ensure that the currently pending claims remain patentable over any previously reviewed references.

By the present *Response*, Claims 1, 14, and 21 are amended, and Claim 34 is presented. No new matter is believed to be introduced, as support for the claim amendments can be found at least in the *Specification*, ¶¶ [0008] and [0080], as published.

### **1. The Present Invention**

The present invention discloses a device for removing a composition from the skin. The device comprises a non-shaving head that is used to move over the skin to effect removal of the composition, a handle, and a joint between the head and the handle, which permits the head to articulate about the handle. (*Specification*, ¶ [0007]). The handle is waisted in shape, having a relatively wide and thick, rounded distal region, a narrowed waist, and a proximal region that is wider than the waist. (*Specification*, ¶ [0080]). Even more specifically, the width of the head is at least approximately 50% greater than the maximum width of the handle. (*Id.*). This configuration enables a user to remove a relatively large portion of the composition as it makes contact with the skin.

## **2. Rejection of Claims 1-8, 14-16, and 21-33 under 35 U.S.C. § 103(a)**

The Examiner rejects Claims 1-8, 14-16, and 21-33 under 35 U.S.C. §103 (a) as allegedly being unpatentable over U.S. Patent No. 5,984,935 to Welt et al. (“Welt”) in view of U.S. Patent Publication No. 2005/0197665 to Teed et al. (“Teed”). Specifically, the Examiner states that Welt discloses a non-shaving head, a handle, and a joint between the head and the handle, all having the same configuration as recited in Applicant’s claims. The Examiner, however, recognizes that Welt “fails to disclose wherein the concave curvature profile of the handle extends continuously along a majority of the length of the handle.” The Examiner attempts to cure this deficiency by stating that it would have been obvious to modify the device of Welt with the continuous concave handle disclosed in Teed. (*Office Action*, p. 3).

To provide a rejection under obviousness, the Examiner has the initial burden to at least determine the scope and content of the prior art and to ascertain the difference between the prior art and the claims at issue under the respective first and second factual inquiries of *Graham v. John Deere Co.*, 383 US 1 (1966). In view of the clarified claims, Applicant respectfully submits that the Examiner no longer meets the initial burden of determining the scope and content of the prior art and ascertaining the differences between the prior art and the claims at issue. Therefore, Applicant respectfully traverses this rejection.

In view of the currently clarified claims, specifically independent Claims 1, 14, and 21, Applicant submits that neither Welt nor Teed, either individually or combined, disclose, teach, or suggest a device for removing a composition and depilated hair from the skin, *wherein the handle is substantially waisted in shape, and further wherein the width of the head is at least approximately 50% greater than the maximum width of the handle*. Further, such a configuration is not obvious over Welt in view of Teed as the configuration recited in the clarified independent claims would render the cited references unsatisfactory for their intended purpose.

Both Welt and Teed disclose tongue scrapers that comprise a handle portion and a tongue cleaning portion (i.e., the head) attached thereto. Neither Welt nor Teed, however, disclose, teach, or suggest a tongue scraper having a waisted-shaped handle portion, wherein the tongue cleaning portion is substantially wider than the maximum width of the handle portion.

As illustrated in Figs. 4, 6, 8, and 11 of Welt, the handle portion (6) of the tongue scraper (2) is slightly tapered and thus is not waisted in shape. Further, the head (4) and handle portion of the tongue scraper are substantially the same width, thus the width of the head is not at least 50% greater than the base. Similarly, Figs. 1 and 3 of the tongue scraper (10) disclosed in Teed illustrates a handle portion (14) having a consistent width. Further, the reservoir cup (12) is slightly wider than the width of the handle portion, but certainly not 50% wider.

Therefore, the clarifications made to Claims 1, 14, and 21, which recite the handle is substantially waisted in shape and further wherein the width of the head is at least approximately 50% greater than the maximum width of the handle, are patentably distinguishable from the tongue cleaner configuration disclosed in the cited references.

The configuration recited in clarified Claims 1, 14, and 21 is advantageous for removing depilatory compositions because the wider head enables a user to cover more skin area at one time, which can ultimately speed up an often times lengthy hair removal process, and the waisted handle enables a user to easily grip and effectively guide the device to effectuate hair removal. Further, because the device is used on external skin (e.g., the arms and legs of a user), there is enough surface area to accommodate the wider head.

Conversely, it is advantageous for a tongue scraper to have an overall narrow configuration, as the tongue scrapers disclosed in Welt and Teed demonstrate. More specifically, tongue scrapers must be narrow enough to comfortably fit inside the mouth of a user and effectively scrape the top surface of the user's tongue. If the head or cup portion of the tongue scrapers disclosed in Welt and Teed, respectively, were at least approximately 50% greater than the handle portion and the handle portions were waisted in shape, the tongue scrapers would be too wide to fit inside the mouth of a user and effectuate tongue scraping. In fact, such widening would cause a user to choke and/or the tongue scraper to become lodged in the user's mouth. Therefore, widening the configuration of the tongue scrapers of Welt and Teed would render the scrapers unsuitable for their intended purpose, and thus the cited references do not render the clarified claims obvious.

Consequently, the combined teachings of Welt and Teed do not disclose, teach or suggest the device recited in clarified Claims 1, 14, and 21. Therefore, neither reference can render the

clarified claim as obvious. Applicant further submits that Claims 2-8, 15-16, and 22-33 cannot be rendered obvious by the cited references, at least due to their dependence on the clarified claims and for further features contained therein.

### **3. Newly Added Claim 34 Is Patentable**

Claim 34 is patentably distinct over the cited references at least because of its dependence on Claim 1, discussed above, and for the further feature recited therein.

### **4. Fees**

This *Response* is being filed within three months of the Final *Office Action*, thus no extension of time fees are believed due.

The *Application* contains one dependent claim in excess of the number paid for upon original filing, thus an additional claim fee is believed due.

Applicant requests continued examination of the application and thus, the appropriate fee of \$810 is believed due.

No other fees are believed due at this time. However, the Commissioner is authorized to charge any fees that may be required for full acceptance of this submission, or credit any overpayment, to Deposit Account No. 20-1507.

## CONCLUSION

By the present *Response*, this Application has been placed in full condition for allowance. Accordingly, Applicant respectfully request early and favorable action. Should the Examiner have any further questions or reservation, the Examiner is invited to telephone the undersigned attorney at 404.885.3817.

Respectfully submitted,

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